IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8597 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAMOR BHAGUBHAI DALSING

Versus

COLLECTOR & DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 8597 of 1999
MR SAMIR SOJATVALA with MR BHARAT T RAO
for Petitioner No. 1
M/S PATEL ADVOCATES for Respondent No. 1
MR N.D.GOHIL, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 09/10/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Samir Sojatvala with

learned advocate Mr. B.T.Rao for petitioner and learned AGP Mr. N.D.Gohil appearing on behalf of respondent No.2.

2. According to the petitioner he was working as Chowkidar with the respondent No.1 since 12.4.1995 and his services were extended from time to time. The petitioner was required to go to see his wife and children when they were ill, however his leave was treated as leave without pay. Since last 5 years he is working as Chowkidar at the Collector's office bungalow and he has been given extension from time to time. He was given extension up to 31.12.1999. However, as he has proceeded on leave without prior permission, the services of the petitioner is terminated by the Collector without following any due process of law.

3. Learned advocate Mr. Sojatvala has submitted that the petitioner is selected after the due process of law and he remained absent for the period from 22.9.1999 to 4.10.1999 which was considered to be a misconduct as no prior permission was obtained by the petitioner and on that basis a show-cause notice dated 7.10.1999 was served to the petitioner and on that basis the order of dismissal has been passed without holding any departmental inquiry against the petitioner. Learned advocate for the petitioner has also submitted that when misconduct has been alleged against any employee and for that misconduct no departmental inquiry is held by the State authority and his services has been terminated without holding any departmental inquiry and without giving any opportunity of hearing to the employee then such order of dismissal is contrary to the principle of natural justice. Therefore, that order is required to be quashed and set aside. Learned advocate Mr. Sojatvala has further pointed out that at the time when this Court has issued rule on 1.11.1999, this Court has also granted interim stay of dismissal order and on that basis the petitioner is working with the respondent. Learned advocate Mr. Sojatvala has also pointed out that ad interim relief which was granted by this Court on 1.11.1999 is confirmed by this Court on 24.11.1999 with liberty to the respondent to apply for vacation/modification of the said order after filing a detailed parawise reply to the petition otherwise matter will rest in due course. Learned advocate Mr. Sojatvala has submitted that no such approach has been made by the respondent during the pendency of this petition. Therefore, in result petitioner is working with the respondent. He also submitted that though petitioner is working on the basis of the ad interim order with the

respondent, more than four year have passed, even there is no complaint made by the respondent against the petitioner for the subsequent service from the date of dismissal order. Therefore, petitioner is sincerely working with the respondent and earlier incident of remaining absent without prior permission was because of illness of his wife and children and that is how no prior permission was obtained and, therefore, respondent has passed dismissal order without holding any departmental inquiry against the petitioner. Learned advocate for the petitioner has also submitted that detailed inquiry as per rules is necessary even according to principle of natural justice when allegation of misconduct is alleged against the employee which is required to be proved by holding departmental inquiry. That was not done by the respondent and that is how according to him order of dismissal is required to be set aside. Learned advocate for the petitioner has relied upon decision of this Court in the case of GUJARAT STATE ROAD TRANSPORT CORPORATION V. CHANDULAL G. RASADIYA, 1993 (1) GLR 442.

4. Learned AGP Mr. N.D.Gohil appearing on behalf of respondent has submitted that a detailed affidavit-in-reply has been filed by the respondent. The petitioner who was remained absent often and on last occasion he was absent from 22.9.1999 to 4.10.1999 without prior permission of the competent officer and left the service before the time without prior permission. He has behaved against the conditions of the appointment order. Thus the misconduct has been committed by the petitioner and therefore show-cause notice dated 7.10.1999 was served to the petitioner and therefore dismissal order is not arbitrary and illegal.

5. Learned AGP Mr. N.D.Gohil has submitted that a detailed reply has been filed by the respondent which shows the conduct of the petitioner who remained often absent and not produced medical certificate in support of illness of his wife and children, therefore, his probation period was extended up to a period of four years and according to the Civil Service Rules 1971 (Discipline) only show cause notice is necessary. No detailed affidavit is necessary, therefore, order of dismissal is rightly passed by the respondent. He also submitted that because of all of sudden absence of the petitioner created many inconvenience to the highest officer and also difficulty to place other watchman in place of the petitioner immediately and therefore, the conduct of the petitioner in performing the work in negligence and carelessness resulted into dismissal order.

6. I have considered the submissions made by both the learned advocates. The facts of the present case are not in much dispute. The petitioner was appointed after due process of law and thereafter he remained continued in service about more than four years but on each occasion his probation period was extended from time to time and according to reply of the respondent, petitioner was remained under probation about more than four years. Whether service rule permitted such probation period up to four years or not, that is a different question, it is not relevant to discuss in the facts of this case. The question is that misconduct has been alleged against the petitioner by the respondent that he remained absent from 22.9.1999 to 4.10.1999 without prior permission of the authority as well as he left the place without prior permission of the authority. This being the clear misconduct alleged against the petitioner and for that no detailed inquiry has been initiated by the respondent before passing the dismissal order against the petitioner. Merely issuing a show-cause notice dated 7.10.1999 to the petitioner is not enough compliance of principle of natural justice. The departmental inquiry is having some substance to give reasonable opportunity to the petitioner about the alleged misconduct so that he can properly defend before the authority by cross-examining the witnesses and by producing the defence witnesses before the competent authority. However, the said opportunity is not given to the petitioner. According to my opinion the order of dismissal is required to be quashed and set aside only on the ground that it is contrary to the principles of natural justice. This is the basic requirement which is to be followed by the respondent before passing the dismissal order against the petitioner. The said aspect has been examined by the Apex Court in the case of MEENGLAS TEA STATE V. THE WORKMEN, reported in AIR 1963 SC 1719, wherein it is held as under:

> "It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross examination as he desires. Then he must be given a chance to rebut the evidence led against him . This is the barest requirement of an enquiry of this character this requirement must be substantially fulfilled before the result of the enquiry can be accepted."

Even in case of S.E. & STAMPING WORKS LTD. WORKMEN reported in AIR 1963 SC 1914, the Apex Court has observed as under :

"An enquiry cannot be said to have been properly held unless, [i] the employee proceeded against has been informed clearly of the charges levelled against him, [ii] the witnesses are examined ordinarily in the presence of the employee in respect of the charges, [iii] the employee is given a fair opportunity to cross examine witnesses, [iv] he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and [v] the enquiry officer records his findings with reasons for the same in his report."

In the case of U.P. WAREHOUSING CORPN. V. VIJAY NARAYAN reported in AIR 1980 SC 840, also the Court has held as under :

"The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross examine the witnesses relied upon by the appellant Corporation and an opportunity to lead evidence in defence of the charge as also a shows cause notice for the proposed punishment."

Even this Court also, having considered all three decisions of the Apex Court referred to above, in case of G.S.R.T.C v. C.G.RASADIYA reported in 1993 [1] GLR 442, the Division Bench of this Court has made the following observations which reads as under :

"14. In view of the aforesaid decisions, it would be difficult to uphold the contention raised by the learned advocate for the petitioner that in these cases the petitioner was not required to hold an elaborate inquiry for the misconduct of the respondent - Conductors. In both the petitions the Conductors' names are removed from the waiting list on the alleged ground of misappropriation of bus ticket fare as it is alleged that at the time of checking the buses on the relevant dates the Conductors had

> not issued the tickets after recovering fare and on such other grounds. In both the cases the Conductors have denied the allegations made against them. Inspite of this, the petitioner has not held any further inquiry. As both the Conductors have denied the allegations made against them, further inquiry ought to have been held and the department ought to have adduced evidence in support of the charges, and the delinquents ought to have been permitted to put relevant questions by way of cross examination if they desire. They also ought to have been given further chance to lead evidence in support of their case. In our view, this would be the barest requirement of holding an inquiry in this type of grave misconduct. In the present cases Bus Conductors are not removed on account of unsuitability. If they are removed without casting any stigma, then in that case further inquiry is not necessary. In this view of the matter, it cannot be said that the order passed by the Labour Court calls for any interference."

Thus, the Division Bench of this Court has come to the conclusion that when the allegation has been denied the allegations made against delinquent employee, further inquiry ought to have been held and the department ought to have adduced evidence in support of the charges, and the delinquents ought to have been permitted to put relevant questions by way of cross examination if they desire. They also ought to have been given further chance to lead evidence in support of their case. Therefore, according to the view of the Division Bench, this would be the barest requirement of holding an inquiry in this type of grave misconduct.

7. In view of the observations made by the Apex Court as well as Division Bench of this Court and considering the facts of this case, though the petitioner was remained absent from 22.9.1999 to 4.10.1999 without prior permission of the competent authority and he left the service before time without prior permission which was considered to be a misconduct by the respondent and show-cause notice dated 7.10.1999 was served and ultimately on 20.10.1999 the dismissal order was passed without holding any departmental inquiry against the petitioner, according to my opinion the order of dismissal dated 20.10.1999 is contrary to the principles of natural justice as no reasonable opportunity of hearing was given to the petitioner prior to passing the dismissal order against the petitioner, therefore, that

order is required to be quashed and set aside.

8. In the result, present petition is allowed. Order of dismissal dated 20.10.1999 is hereby quashed and set aside. As the petitioner has been protected by this Court by interim order dated 1.11.1999 which has been confirmed on 24.11.1999, therefore, there is no question of granting any amount of backwages of interim period. However, it is directed to the respondents to consider the service of the petitioner continuous and whatever service benefit is available to the petitioner may be paid to the petitioner including the increment of interim period within a period of three months from the date of receiving the copy of this order. However, it is made clear that this Court has set aside the dismissal order only on the ground that it is violative of principles of natural justice as departmental inquiry is not initiated against the petitioner prior to passing the dismissal order. Rule is made absolute accordingly. No order as to costs.

(H.K.Rathod,J)

Jayanti*